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No. 88-1940 (2)

In The

Supreme Court of the United States

October Term, 1988

SIGNA DEVELOPMENT CORPORATION,
f/k/a SIGNA INVESTMENTS, INC.,

Petitioner,

vs.

FAYETTE COUNTY, GEORGIA and
THE CITY OF FAYETTEVILLE, GEORGIA,

Respondents.

On Petition For Writ Of Certiorari
To The Georgia Supreme Court

BRIEF IN OPPOSITION FOR THE RESPONDENT FAYETTE COUNTY, GEORGIA

WILLIAM R. MCNALLY
Fayette County Attorney
Counsel of Record for the Respondent

M. VAN STEPHENS, II
100 Habersham Drive
P. O. Box 849
Fayetteville, Georgia 30214
(404) 461-2223

Please Serve:

WILLIAM R. MCNALLY
100 Habersham Drive
P. O. Box 849
Fayetteville, Georgia 30214
(404) 461-2223

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

I.

Whether this Court should decline to grant a Writ of Certiorari to examine the Georgia Supreme Court's determination that the trial court correctly dismissed Petitioner's Complaint for Declaratory Judgment?

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BRIEF IN OPPOSITION FOR THE RESPONDENT FAYETTE COUNTY, GEORGIA

PART ONE

(i)

STATEMENT OF THE CASE

The Petitioner, Signa Development Corporation, f/k/a Signa Investments, Inc., sought to annex approximately 908 acres of land located in unincorporated Fayette County, Georgia into the City of Fayetteville, Georgia in order to develop its land as a planned unit

development. Signa's proposed City development would have yielded a higher density of dwellings than would have been permissible pursuant to County zoning regulations. Since Signa's tract was not contiguous to the existing boundaries of the City of Fayetteville, Signa approached four other landowners between its tract and the existing City boundary in order to create an 835 acre land bridge from the existing City boundary to Signa's property. None of the intermediate landowners had any present intention to develop their land.

The City of Fayetteville annexed Signa's property, along with the four other tracts, during November, 1987. Both during the annexation proceedings and subsequent thereto, citizens of both the City of Fayetteville and Fayette County opposed the Signa annexation on the basis that the development would unduly encroach upon a protected watershed area of the County and would allow development of the subject property with housing densities far in excess of the County comprehensive land use plan. After the land was annexed, the citizens of both the City of Fayetteville and Fayette County requested that their State Representatives introduce legislation to deannex the subject property based upon the concern that Signa's development might adversely affect the County's ability to protect its water supply. The District's two State Representatives subsequently initiated legislation which was passed by both houses of the Georgia General Assembly and signed by the Governor deannexing the property. While the tracts adjoining Signa's which were involved in the Fayetteville annexation were not deannexed, none of those tracts were slated for development

in the near future. Only Signa's tract threatened a violation of the watershed protection ordinance and County land use plan.

Following the deannexation of the subject property, Signa initiated an action in the Fayette Superior Court seeking a declaratory judgment that the General Assembly's Act deannexing the subject property was unconstitutional and void. During the pendency of the action, the parties entered into a temporary consent order prohibiting further development of the subject property pending the outcome of the litigation.

During the trial of the declaratory judgment action, the trial court granted Fayette County's motion to dismiss the case at the end of the Plaintiff's presentation of evidence. The trial court ruled that the Georgia General Assembly has the authority pursuant to Official Code of Georgia Annotated §36-35-2(a) to deannex property from a municipality. The trial court also ruled that since Signa had never made application to Fayette County for any building or development approvals with regard to its development, no actual case or controversy existed.

Signa appealed the trial court's ruling to the Georgia Supreme Court, which affirmed the trial court's decision. The Georgia Supreme Court stated that the Georgia Legislature had the authority pursuant to Official Code of Georgia Annotated §36-35-2(a) to deannex Signa's property. The Georgia Supreme Court also stated in its opinion that the Act deannexing the subject property is not unconstitutional for any of the reasons asserted by Signa. The Georgia Supreme Court subsequently denied Signa's

motion for reconsideration and Signa petitioned to this Court for a Writ of Certiorari.

(ii)

STATEMENT OF THE FACTS

Signa's petition for annexation of its 908 acre tract into the City of Fayetteville came at a time when Fayette County was experiencing severe water shortages due to the drought in recent years. The area's water supply had been inadequate to meet the needs of a rapidly developing rural county. Fayette County is situated approximately 20 miles south of Atlanta and has experienced phenomenal growth as a suburb of Atlanta.

Fayette County's growth, coupled with its inadequate water supply, had resulted in the State of Georgia's insistence that the County enact a watershed protection ordinance to protect the existing sources of water within the County. The watershed protection ordinance adopted by the County restricted the densities of development within watershed areas. Much of Signa's 908 acre tract lies within the protected watershed area. Notwithstanding the property's location, Signa sought to develop the property as a planned unit development with housing densities much higher than those permitted by the watershed ordinance. Signa's development was also in violation of the County's comprehensive land use plan which had been developed to control and apportion the growth which Fayette County was experiencing.

Since the City of Fayetteville permitted higher density developments, Signa approached the City concerning the annexation of its property. Since Signa's tract did not touch the existing City boundary, and in fact was not even near the city boundary, Signa found it necessary to approach four landowners with 835 acres of property situated between the City boundary and Signa's tract. None of these intervening landowners had intentions of developing their property in the near future. Despite public outcry from both citizens of the County and the City, the annexation occurred in November, 1987. The deannexation Act of the Georgia General Assembly was passed on February 17, 1988. Signa had not commenced development of the subject property pursuant to the annexation other than to begin engineering studies with regard to the area. The Signa property had been improved by the creation or improvement of an earthen dam, but this improvement was effectuated while the Signa tract remained in unincorporated Fayette County. The property had not been disturbed pursuant to the new planned unit development at the time the deannexation occurred. Moreover, Signa had entered into a consent order with Fayette County and the City of Fayetteville which enjoined further efforts to alter or improve the subject property pending the outcome of the declaratory judgment action.

Prior to the initiation of the declaratory judgment action, Signa had not approached the County with regard to the possibilities of developing its property pursuant to existing zoning classifications or pursuing rezoning efforts. Signa has had, and continues to have, the ability

to develop its property in accordance with County development requirements. The County does not prohibit development in watershed areas, but in accordance with State concerns, the County regulates the density of development in order to protect the region's water supply. The deannexation of the subject property does not prohibit Signa from developing its property, but merely reduces the housing densities thereon.

PART TWO

REASONS FOR DENYING THE WRIT

A. THE CONTROVERSY BEFORE THIS COURT DOES NOT INVOLVE A SUBSTANTIAL FEDERAL QUESTION WORTHY OF THIS COURT'S CONSIDERATION.

Respondent Fayette County, Georgia respectfully submits that the Georgia Supreme Court's decision which is the subject of this petition for writ of certiorari does not concern a substantial federal question. This case involves the Georgia Supreme Court's determination that a state deannexation statute is valid and enforceable. The controversy centers upon a real estate developer's attempt to annex certain property into a city in order to achieve greater densities of development than would have been permitted had the land remained in the unincorporated area of Fayette County. The considerations with regard to this case concern the State of Georgia's interest in protecting the watershed area within which the subject property is situated.

Pursuant to Supreme Court Rule 17.1, a review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons for such a review. A writ will be granted when a state court of last resort has decided a federal question in a manner in conflict with the decision of another state court of last resort or of a federal Court of Appeals. Respondent respectfully submits that this case does not present such a conflict. In addition, review will be considered when a state court has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a manner in conflict with the applicable decisions of this Court. Respondent Fayette County respectfully submits that these criteria have also not been met by the petitioner. Respondent Fayette County accordingly requests that Signa's petition for writ of certiorari be denied.

B. THE RESPONDENT FAYETTE COUNTY, GEORGIA SHOWS THIS COURT THAT THE PETITIONER HAS FAILED TO STAY THE GEORGIA SUPREME COURT'S REMITTITUR OF THE CASE BACK TO THE TRIAL COURT.

The Georgia Supreme Court has transmitted the remittitur to the trial court in accordance with its rules. Georgia Supreme Court Rule 61, concerning stay of remittiturs, provides as follows:

STAY OF REMITTITURS

> Any party desiring to have the remittitur stayed in this court in order to appeal or seek a writ of

> certiorari in the United States Supreme Court shall file in this court a motion to stay the remittitur with a concise statement of the issues to be raised on appeal or in the petition for writ of certiorari. Such notice shall be filed at the time of filing a motion for rehearing, or if no motion for rehearing is filed, within the time allowed for the filing of the same.

Respondent Fayette County respectfully submits that since the remittitur has been transferred by the Georgia Supreme Court back to the trial court, the Georgia Supreme Court does not possess documentation sufficient to permit a proper hearing of this petition for writ of certiorari. Respondent Fayette County accordingly objects to this petition for writ of certiorari pursuant to Supreme Court Rule 22.3.

Respondent Fayette County, Georgia further shows this Court that pursuant to Supreme Court Rule 28.4(c), since the constitutionality of a statute of the State of Georgia is drawn in question, the Georgia Attorney General should be served with the pleadings in this matter. Respondent Fayette County, Georgia shows that 28 U.S.C. §2403(b) may be applicable to this case.

C. THE GEORGIA SUPREME COURT PROPERLY DETERMINED THAT THE ACT OF THE GENERAL ASSEMBLY DEANNEXING THE SUBJECT PROPERTY WAS A CONSTITUTIONAL EXERCISE OF AUTHORITY GRANTED PURSUANT TO OFFICIAL CODE OF GEORGIA ANNOTATED §36-35-2.

Respondent Fayette County, Georgia shows this Court that the Act passed by the Georgia Legislature deannexing the Signa property is authorized pursuant to

Official Code of Georgia Annotated §36-35-2. The Legislature, through §36-35-2, reserves the authority to change municipal boundaries by local act of the General Assembly. Section 36-35-2 provides as follows:

> Incorporation, dissolution, merger, and boundary changes to be by local act or under general law; annexation of deannexed property.
>
> (a) No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation *or have its municipal boundaries changed* except by local act of the General Assembly or by such methods as may be provided by general law. (Emphasis supplied).
>
> (b) *Whenever any local act of the General Assembly deannexes property lying within the boundaries of a municipal corporation,* such property shall not be subject to annexation under Chapter 36 of this title for a period of five years from such deannexation. (Emphasis supplied).

The Supreme Court of Georgia has upheld the Legislature's right to alter municipal boundaries in the cases of *City of Mountain View v. Clayton County,* 242 Ga. 163 (1978); *Troup County Electric Membership Corporation v. Georgia Power Company,* 229 Ga. 348 (1972); and *Lee v. City of Jesup,* 222 Ga. 530 (1966). In these cases, the Georgia Supreme Court has held that municipalities are creatures of the Legislature, and their existence may be established, altered, amended, enlarged, diminished, or utterly abolished by the Legislature. Courts have long held that whether a proposed deannexation of municipal property is a wise step, and whether it supports the best, long-term interests of the municipality are not judicial questions, but issues for the governing authorities of that municipality, including the Legislature. *Marshall v. Mayor and*

Board of Selectmen, 251 Miss. 750, 171 So. 2d 347, cert. denied 382 U.S. 836. Case law illustrates that statutes providing for the detachment of land from municipal corporations have generally been upheld as against contentions that they were violative of procedural or substantive due process or were violative of the Equal Protection Clause of the United States Constitution. Respondent Fayette County respectfully submits that the Georgia Supreme Court ruled properly in affirming the trial court's dismissal of Petitioner's application for declaratory relief in light of the statutorily approved legislative action in this matter.

D. THE GEORGIA LEGISLATURE'S ACT DEANNEXING THE SUBJECT PROPERTY IS RATIONALLY RELATED TO THE LEGITIMATE STATE PURPOSES SOUGHT TO BE ACHIEVED.

Respondent Fayette County shows that the Georgia Legislature's Act deannexing the subject property is rationally related to the legitimate State purposes sought to be achieved by the Act. As previously noted, Fayette County enacted a watershed ordinance designed to preserve and improve the water quality in Fayette County and to comply with the laws of the State of Georgia. Although the County had such a watershed protection ordinance, the City of Fayetteville did not. The Legislature's Act deannexing Signa's property was a direct response to Signa's proposed development of land lying within a protected watershed area at densities far greater than those deemed appropriate by both the State of Georgia and Fayette County.

Fayette County is one of the fastest growing Counties in the nation. The phenomenal growth experienced by the County has resulted in increased water consumption, which has occurred at a time when the County has experienced a severe and prolonged drought. The citizens of both Fayette County and the City of Fayetteville were apprehensive that since Signa's property had been annexed into the City without a comprehensive development plan, and since the only development plan presented to the residents depicted housing densities far in excess of those densities required to adequately protect the County's water supply, the proposed Signa development might adversely affect the County's water supply and the County's ability to provide water resources for the residents and businesses moving into Fayette County. The General Assembly's Legislation deannexing the Signa property was rationally related to legitimate State purposes of protecting the County's water supply and comprehensive land use plan. Respondent Fayette County respectfully submits that the Georgia Supreme Court acted properly in expressly finding that the Act deannexing the Signa property is not unconstitutional for any of the reasons asserted by Signa.

This Court, in determining whether the Georgia Legislature's Act is violative of the Equal Protection Clause of the Fourteenth Amendment, must first determine the interest which the State claims to be protecting, and the Court must subsequently determine the measure of scrutiny to be applied to the statutory classification created. In this case, the interest sought to be protected is that of the citizens of the region as a whole in the conservation of the region's water resources and the improvement of

property lying within protected watershed areas. In this case, the classifications inherent in the Georgia Statute hinge on the distinction between those property owners not presently seeking to develop property within a watershed area, as opposed to Signa, which was the sole owner of annexed land scheduled for immediate development. Respondent Fayette County respectfully submits that the Georgia Legislature's Act deannexing Signa's property is an economic regulation, and such economic regulations have historically been invested with a presumption of constitutionality. *Trimble v. Gordan*, 430 U.S. 762. Distinctions drawn in the area of economic regulation must be rationally related to a conceivable legitimate state purpose. *New Orleans v. Dukes*, 427 U.S. 297. The Georgia Statute in the case at bar does not impinge upon a fundamental interest and does not create a suspect classification. Respondent Fayette County respectfully submits that although Georgia may have furthered its underlying purpose more artfully, more directly, or more completely, the statutory scheme chosen by the Georgia Legislature is not unconstitutional as applied. *Schweiker v. Wilson*, 450 U.S. 221. See also *Craig v. Boren*, 429 U.S. 190; *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794.

Based upon the aforecited authorities, Respondent Fayette County respectfully requests that this Court deny Signa's petition for a writ of certiorari.

CONCLUSION

The evidence presented at the trial of Petitioner's declaratory judgment action shows that of the five tracts

annexed into the City of Fayetteville on November, 1987, only Signa's tract was slated for development in the near future. The General Assembly's deannexation of Signa's tract was performed pursuant to Georgia statutory authority permitting the Legislature to alter municipal boundaries, and the Act was rationally related to legitimate State interests in protecting Fayette County's watershed areas and the comprehensive land use plan developed to control the growth of the County. Accordingly, the Georgia Supreme Court's decision upholding the trial court's dismissal of Petitioner's declaratory judgment action was proper, and Petitioner's application for writ of certiorari should be denied.

McNally, Fox, Mahler, Cameron & Stephens, P.C.

BY: William R. McNally
William R. McNally
Attorneys for Respondent
Fayette County, Georgia

100 Habersham Drive
P. O. Box 849
Fayetteville, Georgia 30214
(404) 461-2223